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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

LOCAL 138, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 480

LOCAL 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 19-27) is reported at 267 F. 2d 870. The Board's decision and order (Pet. 32-36) are reported at 117 NLRB 635.

JURISDICTION

The judgment of the Court of Appeals was entered on June 17, 1959 (Pet. 28, see Pet. 30), and a petition for rehearing was denied on July 22, 1959

(Pet. 29). The petition for a writ of certiorari was filed on October 16, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board, in ordering petitioner Union to refrain from inducing the employees of certain carriers or of any other employer to engage in work stoppages for the purpose of forcing such employers to cease doing business with the particular primary employer involved here or with any other person, in violation of the National Labor Relations Act, acted within its allowable discretion to select an appropriate remedy.

2. Whether substantial evidence on the record as a whole supports the Board's finding, upheld by the court below, that petitioner Union through its stewards induced the employees of the carriers to refuse to handle the freight of the primary employer involved in the instant case.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in Appendix F of the petition (Pet. 66), are as follows:

> Sec. 10(c)
>
> * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its

findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *.

Sec. 10(e)

The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

STATEMENT

A. *The Board's findings and conclusions.*—The Board found that petitioner Union, in violation of Sections 8(b)(4)(A) and (B) of the National Labor Relations Act, induced and encouraged the employees of five carriers—Allied Grocers of Indiana, Inc. (Allied), Indianapolis and Southern Motor Express, Inc. (I. & S.), McDaniel Freight Lines, Inc. (McDaniel), Motor Freight Corporation (Motor Freight) and R. D. Motor Express Co. (R.D.)—to cease handling the freight of Capital Paper Company and Consolidated Sales, Inc. (jointly referred to as Capital), for the purpose of (1) forcing these five carriers to discontinue business relations with Capital, and (2) compelling Capital to recognize and bargain with the Union as the representative of its employees, although the Union had not been certified as such representative by the Board. The subsidiary facts upon which the Board based its findings may be summarized as follows:

On December 16, 1955, Capital declined the Union's request for recognition as the collective bargaining representative of Capital's employees (B.A. 58-59; 43-44, 51).[1] The Union then filed a representation petition with the Board, which, after hearing, directed an election (*ibid.*). Pending the election, which it eventually lost on June 27, the Union picketed Capital's premises. It also sought to bring secondary pressure to bear upon Capital to recognize

[1] "B.A." refers to the Board Appendix filed with the court below.

it as the employees' bargaining representative by inducing the employees of various employers doing business with Capital not to handle its freight.

The Union had contracts with those employers which contained "hot cargo" clauses permitting Union members to refuse to handle goods of any company "involved in any controversy with this or any other Union." The contracts also provided for the designation of job stewards by the Union "to handle such business as may, from time to time be delegated to them by the Union" (B.A. 66-69; 47-50).

On February 14, 1956, employees of Allied, including Union steward Doss and his alternate, Green, refused to unload a Capital truck, telling their foreman that a strike was on at Capital (B.A. 59; 6-7, 14, 44-45). When R. W. Harris, acting superintendent of the Allied warehouse, questioned Doss' statement concerning a strike at Capital, Doss called the Union hall and reported back to Harris that the strike was still on and that Capital's trucks would not be unloaded because "it was merchandise through a picket" (B.A. 59-60; 3-5). Doss then reported to his fellow employees that he had called "the Union on it" and the truck was not to be unloaded because the Union was on strike against Capital (B.A. 60; 8, 11). Doss told employee Freeman that Capital "had a strike on—a picket line" (B.A. 60; 8).

On February 15, Union members at I & S similarly refused to unload a Capital truck. Union steward Davis told Capital superintendent Lovinger that he would have nothing to do with the shipment, terming it "unfair freight" (B.A. 61; 15). Following

a telephone call to the Union hall, Davis further told Lovinger, "I'm sorry. I can't handle your freight. It's unfair goods" (B.A. 61; 16, 20). The Capital truck left without being unloaded when I & S terminal manager remarked to Lovinger that he could do nothing because "My boys won't handle it" (B.A. 61; 16, 21). Davis subsequently told several employees not to handle further Capital shipments because Capital was being picketed and its freight was "unfair" (B.A. 61; 21).

About February 23, Union steward Taylor unloaded a Capital truck at the terminal of McDaniel (B.A. 62; 26). Taylor then reported to his foreman, Stringer, that the freight would have to be checked for missing items before transfer to a McDaniel trailer (B.A. 62; 22-23). That afternoon, however, Taylor informed Terminal Manager McClain that he would not handle that Capital shipment because he had learned that the merchandise was "unfair" (B.A. 62; 26). The merchandise was shipped out several days later by someone other than Taylor (B.A. 62; 24). Another Capital shipment about that time was turned away by McDaniel upon the refusal of its dock men to handle the consignment (B.A. 62-63; 22).

On February 27, Union steward Armstrong, employed by Motor Freight, refused to handle a Capital shipment because it "had come through a picket line" (B.A. 63; 26-27).

The same day, Union members Ervin and McClara, employed by R.D., stopped work after partially checking in a Capital shipment. Ervin told the

Capital driver, Hacker, that "they couldn't receive that because it was 'hot goods' * * * they couldn't touch no more of it" (B.A. 63; 30-31). When Hacker insisted that Capital was not on strike, Ervin called the Union hall (B.A. 63-64; 33). A few minutes later, Ervin returned and told Hacker, "I can't handle that * * * I might get hell if I did or if I don't" (B.A. 64; 31-32). Ervin told R. D. terminal manager Sewell that he would not check in the Capital shipment because he had "just called the Hall" and been advised that the shipment was "hot goods" (B.A. 64; 41). Ervin executed and signed a statement indicating that Capital shipments had been refused and that the Union hall had been called and approval given to the refusal (B.A. 64; 34-35). Union officials were much concerned when advised of Ervin's written statement. They demanded that the Company turn it over to them and ordered a one-day strike to induce the Company to do so (B.A. 64-65; 34-36, 39, 43).

On the basis of the foregoing facts, the Board affirmed the Trial Examiner's finding that the Union violated Sections 8(b)(4)(A) and (B) of the Act by inducing and encouraging members employed at Allied, I & S, McDaniel, R. D. and Motor Freight not to handle Capital freight, with the object of forcing a cessation of business between these companies and Capital and of compelling Capital to recognize and bargain with the Union which had not been certified as the representative of its employees (B.A. 52; 72-75).

B. *The Board's order.*—The Board's order (B.A. 53-56) requires the Union to cease and desist from inducing and encouraging employees of the foregoing five carriers or of any other employer to engage in work stoppages (1) for the purpose of forcing these firms or any other employer to cease doing business with Capital or with any other person or (2) for the purpose of requiring Capital to recognize and bargain with the Union unless it has been certified as collective bargaining representative.

C. *The decision of the Court of Appeals.*—The Court of Appeals affirmed the Board's findings as adequately supported by the record and enforced the Board's order.

ARGUMENT

1. Petitioner's main contention (Pet. 12-14) is that the Board's order as enforced is too broad because it prohibits the Union from inducing the employees of the carriers involved here or any other employer to engage in work stoppages for the purpose of forcing these employers to cease doing business not only with Capital but also with any other person. It is settled, however, that the Board may fashion its order to enjoin not only the particular unfair labor practice found, but also like or related acts which may be anticipated from the wrongdoer's past misconduct. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 436; *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694, 706. In the instant case, the Board found that petitioner,

in violation of Sections 8(b)(4)(A) and (B), had induced the employees of five carriers to cease handling Capital's freight. The record also revealed, as the Board specifically noted, a pattern of similar violations of the Act in three previous cases involving petitioner Union and some 30 other employers.[2] In these circumstances, the Board's order, embracing within its protection not only the employers immediately involved in this case but others as well, represents a permissible exercise of its "wide discretion in its choice of a remedy" (*Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611).

As this Court has observed, "Decrees of * * * generality are often necessary to prevent further violations where a proclivity for unlawful conduct has been shown." *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 192. Moreover, "One cannot generalize as to the proper scope of these orders. It depends on the facts of each case and a judgment as to the extent to which a particular violator should be fenced in." *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385, 392. The cases cited by petitioner (Pet. 12-13), in which different courts of appeals allegedly have considered the "same type of order * * * with conflicting results," do not involve any conflict in principles, but reflect merely the different "facts of each case" (*Mandel, supra*).

2. Petitioner's contention (Pet. 15-16) that the court below misapplied the proper standard for

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[2] *Irving J. Cooper et al.*, 101 NLRB 1284; *Hoosier Petroleum Co.*, 106 NLRB 629, enforced, 212 F. 2d 216 (C.A. 7); *Marsh Foodliners, Inc.*, 114 NLRB 639.

judicial review as enunciated in *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U. S. 474, is actually an attack on the sufficiency of the evidence to support the Board's findings.

Specifically, petitioner challenges the evidentiary support for two findings: (1) that the Union was responsible for the acts of its various stewards who induced and encouraged the employees of the five carriers to refuse to handle Capital freight; and (2) that such employees refused to handle such freight at the instigation of the Union rather than of their own volition.[3] As the summary of the record evidence shows (see Statement, *supra*, pp. 4-7), the court of appeals was fully warranted in concluding (Pet. 20-21, 23, 25) that both of those findings are adequately supported. There is no need for further review of these factual questions.

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[3] This finding fully answers petitioner's contention (Pet. 15) that the court below failed to follow the "rule" that union members acting "individually" have the right to refuse to handle "hot cargo."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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